

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)	
TIDEWATER UTILITIES, INC., FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	PSC DOCKET NO. 04-CPCN-22
NECESSITY TO PROVIDE WATER SERVICES TO)	(HORSEY PROJECT)
TWO PARCELS OF LAND LOCATED WEST OF)	
THE TOWN OF DELMAR, LITTLE CREEK)	
HUNDRED, SUSSEX COUNTY, DELAWARE)	
(FILED AUGUST 27, 2004))	
)	

ORDER NO. 6501

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICES**

This 9th day of November, 2004, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Applicant"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On August 27, 2004, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to two parcels of land located west of the Town of Delmar, Little Creek Hundred, Sussex County, Delaware ("Proposed Service Area"), as specifically described by the tax map parcel number identifications in paragraph 6 of the Application. The two parcels of land are owned by a single entity, Horsey Property, LLC.

2. The Application includes a petition signed by the parcel owners and a statement indicating that the property owners have waived their right to "opt-out" of the Proposed Service Area. Staff allowed this, as permitted by *26 Del.C. § 203C(g)(2)*, as an alternate means of demonstrating compliance with the notification requirements set forth in *26 Del.C. § 203C(e)(1)*.

3. Staff directed the Applicant to publish notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the publication. The notice was published in The News Journal and Delaware State News newspapers on October 1 and October 3, 2004, respectively.

4. The Commission did not receive an "opt-out" notice from the owners, any request for a hearing on the application, or any objection to the application.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in *29 Del. C. § 10123 (¶ 3)*. In addition, the Application includes:

- (i) a petition signed by the landowners of the Proposed Service Area (*¶ 1(d)*);
- (ii) the County tax parcel identification numbers of the properties in the Proposed Service Area (*¶ 6*);
- (iii) a listing of the landowners of record of the parcels included in the Proposed

Service Area and tax maps locating the parcels (§ 7); and

- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a)&(b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (§ 8 (a)-(d));

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application in the Delaware State News and The News Journal newspapers on October 1 and October 3, 2004, respectively;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested that any written comments on the application be submitted to the Commission by October 11, 2004;
- (iii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated October 4, 2004) reporting that they have no outstanding issues with the Applicants that might preclude granting the requested CPCN;
- (iv) Correspondence from the Office of the State Fire Marshal (dated September 29, 2004) indicating the Agency had no outstanding issues that would preclude granting the requested CPCN;
- (v) Printed e-mail correspondence from the Department of Natural Resources and Environmental Control (dated September 30, 2004) indicating the Agency had no outstanding issues that would preclude granting the requested CPCN;
- (vi) Staff's November 1, 2004 memorandum of its investigation and its recommendation that the Commission approve the application and

grant the requested CPCN. Staff reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

7. Finally, the record does not contain any evidence that any person objects to the application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. The Commission has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities, and Applicant operates a water system for public use and, consequently, is a water utility.

9. The Applicant obtained the consent of the majority of the landowners of the property within the Proposed Service Area (in this situation, a single owner) in compliance of 26 Del. C. § 203C(e)(1)(b). Second, the record reflects: (a) no objection to this application; (b) no request for a hearing on this application; (c) the Applicant's statement that the Applicant will continue to meet the water pressure requirements for its existing customers; and (d) the Applicant's statement that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

10. Finally, the Commission's Staff has investigated the Applicant and has not discovered that the Applicant is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water service to its existing customers. The present record does not provide any basis for the

Commission to believe that any further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

11. In summary, Commission Staff finds no reason that the Applicant is not entitled to a CPCN under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i) (2002 Supp.). Since the Applicant has satisfied the statute's requirements, the Commission shall issue a CPCN permitting the Applicant to expand its operations to provide water utility services to the parcels identified in Exhibit "A" hereto.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 203C(e) (2002 Supp.), the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 04-CPCN-22, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That Tidewater Utilities, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary

E X H I B I T "A"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

HORSEY PROJECT
LITTLE CREEK HUNDRED
SUSSEX COUNTY, DELAWARE

SUSSEX COUNTY TAX MAP PARCELS NOS.

5-32-18-42.00

5-32-19-1.00